

## **Chapter 4 BUILDINGS AND BUILDING REGULATIONS\***

### **ARTICLE I. IN GENERAL**

#### ***Sec. 4-1. Building permit fee schedules.***

- (a) In accordance with the provisions of the ordinances of the city and the State Building Code, no permit shall be issued by the inspector of buildings or the inspector of plumbing until the required fee has been paid to the city collector or building department or other authorized city agency in accordance with the fee schedules, which schedules are on file in the city clerk's office.
  
- (b) At his sole discretion, the inspector of buildings may require that cost computations verified by a registered architect or registered professional engineer (or other person satisfactory to the inspector of buildings) be submitted to substantiate disputed estimates. (Ord. of 4-21-81; Ord. of 8-17-87; Ord. of 12-21-87)

#### ***Sec. 4-2. Enclosures for private swimming pools.***

- (a) Every private swimming pool, as defined in the Massachusetts State Building Code, shall be completely surrounded at all times, whether or not the same be filled with water, by a fence or wall not less than five (5) feet in height, except that fences or walls in existence at the time of the effective date of the ordinance from which this section derives shall be deemed to satisfy this requirement if they are not less than four (4) feet in height. Every such fence or wall shall be so constructed as not to have any openings, holes, gaps larger than four (4) inches except for doors and gates and except for picket fences in which case, the gap between pickets shall not exceed four (4) inches. Every such fence, wall, gate or door having gaps or holes shall be covered on the inside with canvas or other similar substance so as to make the pool impervious to view from outside the fence. A building may be used as part of such enclosure. Elevated platforms around above-ground constructed pools equipped with steps and railings shall not be deemed a satisfactory fence enclosure as required by this section.
  
- (b) All gates or doors opening through such enclosure shall be not less than the same height as the fence or wall and shall be equipped with a self-closing, self-latching device located at least four (4) feet above the underlying ground and inaccessible from the outside to small children. Every gate or door shall be kept locked at all times when pool is unoccupied and/or not in use. All such gates or doors shall reach to the ground level leaving only sufficient space for the opening and closing of same. (Rev. Ords. 1976, Pt. 2, Ch. 11, § 18)

### ***Sec. 4-3 Everett Residents Construction Employment Ordinance***

(a) Purpose

Everett residents should be part of and benefit from improvements in the City of Everett, private and specifically those public projects including but not limited to residential, institutional and commercial construction, which are funded by public funds. Therefore, it is appropriate for the City of Everett to make certain that each development constructed with public funds as defined herein, includes employment opportunities for Everett residents through compliance with this Ordinance entitled the Everett Resident Construction Employment Ordinance.

(b) Definitions

- (1) Bona fide Everett resident: Any person for whom the principal place of residence is within the City of Everett for at least six (6) months immediately prior to the award, contracting and or permitting of a public construction project.
- (2) The principal place of residence shall mean that place where a person normally eats and sleeps and maintains his or her personal effects. Proof of such residence shall be a valid Massachusetts driver's license indicating an Everett address.
- (3) Public construction: A project or a contract for construction of a project taking place within the City of Everett which is funded in whole or in part by City, State, County, or Federal or other public funds, or by grant funds administered by the City or which in accordance with a Federal, State or other grant. The City expends or administers or a contract to which the City is a signatory.
- (4) Contractor: Shall mean all persons, corporations, agencies, forms businesses, developers, subcontractors, for projects defined herein as "Public Construction".
- (5) Bidding Authority: City department or agency assigned or directly responsible for the bidding and or project management of public construction.
- (6) Everett Residents Employment Certification Form: The contractor with and all bids for public construction must submit this form. Such form may be from time to time amended by Monitoring Committee to suit the purpose and intent of this ordinance.
- (7) Everett Residents Employee Reporting form: The form submitted by the contractor within twenty-one days of acceptance of the contractor as lowest bidder. Such list shall contain Everett Residents that have been contacted and confirmed to be employed by the contractor. Such form may be from time to time amended by Monitoring Committee to suit the purpose and intent of this ordinance.
- (8) Monitoring Committee Decision on Compliance with this Ordinance: The form used by the Monitoring Committee to render decisions on submittals of the Everett Resident Employee Reporting form submitted by the

bidding authority. Such form may be from time to time amended by Monitoring Committee to suit the purpose and intent of this ordinance.

(9) DLI List: Shall mean the most recent Commonwealth of Massachusetts Department of Labor and Industries for minimum wage rates under the prevailing wage laws as determined by MGL Chapter 149, sections 26 to 27D.

(10) Everett Residents Employment Monitoring Committee: Herein known as Monitoring Committee. The Everett Residents Construction Employment Ordinance, its enforcement, and compliance with its requirements shall be monitored by the Everett Residents Employment Monitoring Committee.

a. Such committee shall be comprised of five (5) individuals including the following and each shall serve at the discretion of his or her appointing authority:

1. One (1) designee of the Common Council President;
2. One (1) designee of the Board of Alderman President;
3. Two (2) designees of the Mayor;
4. One (1) designee of the Local Building Trades Council.

(c) Policy

On any public construction project, as defined herein, the worker hours on a craft by craft basis shall be performed as follows:

- (1) At least thirty-five percent (35%) of the total employee man hours per trade shall be performed by bona fide Everett residents, five percent (5%) of which shall be performed by apprentices indentured to a bona fide apprenticeship program approved by the Commonwealth of Massachusetts.
- (2) At least ten percent (10%) of the total employee man hours shall be performed by minorities qualified by craft.
- (3) At least five percent (5%) of the total employee man hours worked shall be performed by women qualified by craft.

(d) Monitoring Committee Responsibility

- (1) Such committee shall meet on a bi-weekly basis, or as needed and shall review and monitor all information and documentation provided by developers to establish compliance with said ordinance.
- (2) Upon request, all developers shall submit weekly workforce reports listing the following:
  - a. name of each employee,
  - b. residential address of each employee and length of residence,
  - c. craft of each employee,
  - d. job category of each employee,
  - e. hours worked of each employee,
  - f. hourly wage of each employee, and
  - g. company for which each employee is employed.
- (3) If through such monitoring, it is determined that one or more developers are not complying with said ordinance, the committee shall immediately request

the Building Inspector and the bidding authority, shall take one or more of the following actions:

- a. Assessment of a fine of \$300.00 per day of violation, or the maximum amount allowed by lawm whichever is less, against the developer who violates this ordinances, to be paid within thirty (30) days of such assessment.
- b. Withholding of payment due under the contract or subcontract until compliance is obtained.
- c. Liquidated damages payable to the city in the amount of 5% of the value of the contract.
- d. Revocation of all building permits pertaining to such development until violations have been eliminated. The sole exception to the implementation of such enforcement procedures is the determination and approval of the Monitoring Committee, as defined in section (e) that compliance cannot be obtained because of high local construction employment levels of Everett and Everett residents being technically unavailable persons and that therefore, a waiver from compliance should be allowed.

(e) Compliance Waiver

In the event of high local construction employment levels of qualified Everett residents and documented inability of developers, contractors and subcontractors to hire local employees because of such high local construction employment levels, compliance with the provisions of this ordinance may be waived in whole or in part, on a case by case basis, through a determination made by the Monitoring Committee, as defined in Section (d) that high local employment levels prohibit the developer, contractors and subcontractors from hiring local area employees as required. Such documentation shall include evidence of effort conducted by the developer, contractor and subcontractors, which show a high level of effort in attempting to obtain local employees. Such effort shall include local advertising to seek local employees, and solicitation of local companies for contracting purposes.

(f) Monitoring Committee Review

- (1) The Monitoring Committee shall review the Everett resident employee reporting form(s) as submitted by the Contractor and Bidding Authority. The Monitoring Committee shall further be responsible for carrying out the review provisions of this ordinance.
- (2) The Monitoring Committee shall make decisions as cited below within the following criteria:
  - a. Ensure that the Contractor has completed the Everett Employee Reporting Form.
  - b. The information provided must show compliance with the thirty-five percent (35%) requirement cited in Section (c).

- c. The Contractor shall have received commitments from Everett residents in accordance with the Everett Resident Employee Reporting Form.
- (3) The Monitoring Committee shall file a final decision with the city clerk within fourteen (14) days of receipt of the information as cited above.
- a. Such decision shall also be forwarded to the bidding authority and sent registered mail to the Contractors who have been reviewed for compliance.
  - b. Such decision shall be in the manner of the form titled “Everett Residents Employment Monitoring Committee Decision on Compliance on Compliance with the Everett Residents Construction Ordinance.”

(g) Bidding Authority Responsibility

- (1) Fourteen days prior to the date of public bidding (including any and all subcontractor bidding) it shall be the responsibility of the bidding authority to serve public notice to the City of Everett that a public construction project is being bid.
- a. Such notice shall be for the purpose of informing the Everett residents of employment opportunities in accordance with job classifications (the DLI list) applicable to the project being bid.
- (2) Such notice shall be placed in the newspaper of regular circulation fourteen days prior to the bid notice and shall include all project information as required and require the inclusion of the following language at the beginning of such notice:

*CITY OF EVERETT  
EVERETT RESIDENTS CONSTRUCTION ORDINANCE  
REGISTRATION OF EVERETT RESIDENTS FOR EMPLOYMENT*

*In accordance with the Everett Residents Construction Ordinance this is a public notice to request Everett Residents skilled in trades as listed in MGL Chapter 149, Section 26 to 27D amended as applicable to the below project to register their names for consideration of employment for such project. Registration must be made on the appropriate form titled “Everett Resident Public Construction List” at the Everett City Clerk’s Office at 484 Broadway, Room 10, Everett.*

- (3) The Bidding Authority shall include a copy of this ordinance and any and all forms in all copies of the bid specifications for public construction projects as defined herein.
- a. It shall be the responsibility of the bidding authority to submit to the City Clerk a copy of the DLI listing, Everett Resident Construction list with the appropriate items completed and the Everett Resident Employee Reporting Form for the lowest bidder.

(h) Administration

- (1) It shall be the responsibility of the City Clerk to maintain the Everett Resident Public Construction List on a project by project basis and provide copies of such list to all prospective contractors bidding on public construction.
- (2) The City for contacting Everett Residents shall also maintain a running list of all registrants in a database for use.
- (3) Upon receipt of such forms from the bidding authority, the City Clerk shall transmit copies to the Monitoring Committee.

(i) Contractor Responsibility

- (1) In accordance with this ordinance, the contractor shall be responsible to document that not less than thirty-five percent (35%) of the total employee man hours by craft shall be performed by bona fide Everett residents.
- (2) The contractor shall be responsible to document that not less than ten percent (10%) of the total employee man hours shall be performed by minorities qualified by craft.
- (3) The contractor shall be responsible to document that not less than five percent (5%) of the total employee man hours shall be performed by women qualified by craft.
- (4) The contractor shall be required to submit with all bids for public construction the form titled "Everett Residents Employment Certification" form, which is attached hereto and incorporated herein by reference. It is the responsibility of the contractor to complete such form. Forms will be made available in the bid specifications.
- (5) The lowest responsible bidder as determined by the bidding authority shall within 21 days of such determination complete the Everett Resident Employee Reporting Form and submit the form to the bidding authority.
- (6) The contractor may submit with the Everett Resident Employee Reporting Form a request for waiver from Section (c) herein. Such waiver shall be based on the fact that after review of sufficient data, a pool of labor does not exist.
- (7) Failure of the contractor to submit such forms completed with the bid or after determination of lowest bidder shall be sufficient reason for the bidding authority, upon the recommendation of the Monitoring Committee, to not accept such bid.

(j) Severability

- (1) Where this law and any selection of employees thereto conflicts with other laws relating to affirmative action hiring requirements as set forth by Federal, State or Local Laws, those laws shall supersede this chapter.
- (2) In the event that any section of this ordinance is deemed illegal, unenforceable or unconstitutional, then the remaining sections shall remain in full force and effect.

**Secs. 4-4--4-20. Reserved.**

## **ARTICLE II. POLES AND WIRES\***

### **DIVISION 1. GENERALLY**

#### ***Sec. 4-21. Petitions for location of poles.***

Any petition to the board of aldermen for locations for poles, guywires, or other apparatus for the transmission of electricity, shall be accompanied by a written report from the inspector of wires, including therein such recommendations as he may deem necessary. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 5; Ord. of 11-27-95(1))

#### ***Sec. 4-22. Removal of poles.***

Whenever a utility company abandons a pole, it shall remove such pole within sixty (60) days from the installation of a new pole. Whoever willfully neglects or refuses to remove such pole shall be subject to a fine of twenty dollars (\$20.00) a day for each day beyond the sixty-day period. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 5A)

#### ***Sec. 4-23. Bonds.***

Any person doing any work coming under the provisions of this article or constructing, maintaining or operating a telegraph, shall provide the city with a surety satisfactory to the board of aldermen in a penal sum not less than fifty thousand dollars (\$50,000.00). Such bond shall be conditioned to indemnify and save harmless the city against all damage, cost, expense and loss whatsoever to which it may be subjected in consequence of the acts and neglect of such persons, their agents, officers and servants in any manner arising from or growing out of the use and transmission of electricity, the privileges permitted by the city, and the construction, maintenance, operation and the use of lines, wires, cables, conduits, posts, poles, structures, constructions, fixtures and apparatus. The bond shall be also conditioned to fulfill all agreements with the city, all the orders, conditions and obligations imposed by the board of aldermen or by chapter 253 of the Acts of 1915, and all obligations and duties required by law, and by this article and every other ordinance, and all additions and amendments relating thereto. A new bond of like import and with new surety may at any time be required by the city, which new bond shall be a strengthening bond, unless the surety on former bonds is expressly released from further liability by vote of the board of aldermen. Bonds required by this section shall be filed with the city clerk. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 8)

#### ***Sec. 4-24. Annual report of overhead and underground wiring systems.***

Every person owning, leasing or operating any wires within the city, either overhead or underground, shall annually furnish to the inspector of wires plans or other suitable information providing an accurate record of all additions or alterations to or removals from their overhead or underground wiring systems. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 11)

#### ***Sec. 4-25. Reserved space in all conduits for use of city.***

In all conduits constructed under the provisions of chapter 253 of the Special Acts of 1915, and any other general or special law, ordinance or authority, such sufficient and necessary space as shall be determined by the inspector of wires shall be reserved free of expense for the use of the city exclusively for municipal purposes. The city, by its

inspector of wires or his agent, shall be allowed access to such conduits at all times. The city shall be allowed equal facilities and privileges with others using the same conduits in installing, removing and maintaining wires. The extent and location of such space shall be subject to the approval of the inspector of wires. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 13)

***Sec. 4-26. Reports to be filed after installations made.***

Whenever installations shall be made under the provisions of chapter 253 of the Special Acts of 1915, any other general or special statute or ordinance or authority to erect and maintain poles, or to construct conduits or other fixtures in the public ways, bridges or grounds, to support or carry lines or wires for the transmission of electricity, the person to whom such permission is granted shall file with the inspector of wires within thirty (30) days from the date of such installations a detailed report of the installations that have been made. Failure to file such report in detail satisfactory to the inspector of wires shall cause such authorization to be null and void. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 14)

***Sec. 4-27. Relocation of conduits where sewers to be enlarged or other public works to be constructed.***

In case the city finds it necessary to construct or enlarge sewers or other public works in streets where conduits are laid, which shall require changing the locations of such conduits, such changing, when required by the board of aldermen, shall be at the expense of the company owning the conduits, who shall forthwith carry out the same, but the board of aldermen before ordering a given change shall give the company notice and an opportunity to be heard. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 15)

***Sec. 4-28. Notice prior to making excavations.***

Any department of the city, person, or private contractor excavating in any public way, shall before making any excavations notify, in writing, the inspector of wires. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 16)

**Secs. 4-29--4-50. Reserved.**

**DIVISION 2. INSPECTOR OF WIRES\***

***Sec. 4-51. Appointment.***

As required by General Laws, chapter 166, section 32, there shall be a wire inspector who shall be appointed by the building inspector. This appointment shall be in accordance with the provisions of General Laws, chapter 31. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 1; Ord. of 11-7-88)

***Sec. 4-52. Qualifications; powers and duties generally.***

- (a) The wire inspector shall be an electrician licensed under the laws of the Commonwealth. The wire inspector shall be in charge of the wire division within the building department, and in addition to the powers, duties and responsibilities imposed upon the wire inspector by General Laws, chapters 143 and 166, and other general and special statutes, and all rules and regulations made and promulgated pursuant to the provisions of any such

statutes, he shall have such additional powers, duties and responsibilities as are established by ordinance.

- (b) In accordance with the provisions of chapter 253 of the special Acts of 1915, the wire inspector is hereby designated as the officer who shall have the powers, duties and responsibilities provided by such chapter.

(Rev. Ords. 1976, Pt. 2, Ch. 12, § 2; Ord. of 11-7-88)

***Sec. 4-53. Responsibility as to electric wires and wire systems owned by city.***

The inspector of wires shall have the responsibility for the construction, maintenance and operation of the fire and police signal systems, and all other electric wires and wire systems owned or under the control of the city. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 3)

***Sec. 4-54. Control of location of street lights; access to buildings.***

The location of street lights shall be under the control of the inspector of wires. The inspector of wires shall have access to buildings and places necessary for the purposes set forth in this and section 4-53. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 4)

***Sec. 4-55. Electrical work permit--Required.***

All persons doing electrical work in the city shall obtain a permit from the inspector of wires before commencing any work. (Rev. Ords. 1976, Pt. 2, Ch. 12, § 6)

***Sec. 4-56. Same--Fees.***

- (a) The fee schedule of the Wire Division, determined in accordance with ordinance, shall be paid and is on file in the office of the City Clerk.
- (b) Churches and schools below college grade level will be exempt from payment of the fee provided for under this section. (Ord. of 4-4-88(1))

***Sec. 4-57. Same--Validity.***

Permits issued under this division are valid for a period of thirty (30) days only from date of issuance. If work is not in progress at expiration date, permits will be voided. A new application and fee will be required. The inspector of wire must be notified by the permittee upon completion of all work. In the case of new homes, notification must be given when fixtures and devices are installed. (Ord. of 4-4-88(1))

**ARTICLE III Responsible General Bidders, Filed Sub-bidders, General Contractors and Filed Subcontractors on Public Construction Projects.**

***Section 4-58 Purposes***

The city expends substantial municipal funds for public construction projects, a large portion of said money being derived from taxes paid by Everett residents, that accordingly it is in the public interest, health, welfare and safety to ensure that the employees on such projects are paid at the lawfully required wage rates, have been trained in bona fide apprenticeship training programs, have hospitalization and medical coverage, and industrial accident insurance coverage, and are classified according to the law; and further that in light of unemployment in the City of Everett, and its deleterious

effects upon the neighborhoods of the City of Everett, and the economic loss to the City of Everett when general bidders, filed sub-bidders, general contractors and filed subcontractors who perform work in connection with the aforesaid public construction projects are not from the Everett area and/or hire workers not from the Everett area, it is in the public interest to require those general bidders, filed sub-bidders, general contractors and filed subcontractors who perform work in connection with the aforesaid public construction projects to comply with the Everett Residents Construction Employment Ordinance (Section 3.5A); and it is found and determined that the requirements of this chapter will serve the public interest, health, welfare and safety as described hereinabove.

**Section 4-59**                      ***Contractor Qualifications and Sanctions***

(a) Requirement

All bidders and all subcontractors under the bidder for projects subject to M.G.L. C. 149§44A(2) shall, as a condition for bidding, agree in writing that they shall comply with the following obligations:

- (1) The bidder and all subcontractors under the bidder shall comply with the Everett Residents Construction Employment Ordinance.
- (2) The bidder and all subcontractors under the bidder must comply with the obligations established under M.G.L. C. 149 to pay the appropriate lawful prevailing wage rates to their employees.
- (3) The bidder and all subcontractors under the bidder must maintain or participate in a bonafide apprentice training program as defined by C. 23 subsection 11H and 11I for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Industries and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of the contract.
- (4) The bidder and all subcontractors under the bidder must furnish at their expense, hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by M.G.L., C. 149§26 in establishing minimum wage rates.
- (5) The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all the employees employed on the project in accordance with MGL, C. 152.
- (6) The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income taxes withholding, M.G.L., C. 149§148B.

(b) Weekly Certification

All bidders and all subcontractors under the bidder who are awarded or otherwise

obtain contracts on projects subject to M.G.L., C. 149§44A(2) shall comply with the obligations in numbered (1) through (6) as set forth in subsection (a) above for the entire duration of their work on the project, and an officer of each such bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

(c) Sanctions

(1) Any bidder or subcontractor under the bidder who fails to comply with any one of obligations 1 through 6 as set forth in subsection (a) above for any period of time shall be, at the sole discretion of the Chief Procurement Officer, subject to one or more of the following sanctions:

- a. cessation of work on the project until compliance is obtained;
- b. withholding of payment due under any contract or subcontract until compliance is obtained;
- c. permanent removal from any further work on the project;
- d. liquidated damages payable to the City of Everett in the amount of five percent (5%) of the dollar value of the contract.

(2) In addition to the sanctions outlined above, a general bidder or contractor shall be equally liable for the violations of its contractors with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L., C. 149, §44F. Any contractor or subcontractor who had been determined to have violated any of the obligations set forth in Section (a) above shall be barred from performing any work on any future projects for six months for a first violation, for three years for a second violation, and permanently for a third violation.

(d) Exemptions

The provisions of this section shall not apply to construction projects for which the low bid was less than one hundred thousand dollars (\$100,000), or to work performed pursuant to subcontracts that are subject to MGL, C. 149, §44F and that were bid for less than twenty-five thousand dollars (\$25,000), or to re-bid for construction projects for which the City of Everett receives fewer than three (3) qualified contract bidders in the original bid.

(e) Savings Clause

If any of the provisions of this ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall not be effected thereby.

(Ord. of 03-10-03)